IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1509 of 1985

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

LAXMIBEN PRAGJI UKA

Versus

KESAR SAMAT DUDIA SINCE DECEASED THROUGH HIS HEIRS

Appearance:

1. Civil Revision Application No. 1509 of 1985

MR AR THAKKAR for Petitioner No. 1-7

NOTICE SERVED for Respondent No. 1

MR CH VORA for Respondent No. 1/1

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 16/09/2002

ORAL JUDGEMENT

This Revision Application preferred under Section

29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as the 'Rent Act') arises from the judgment and order dated 19th October, 1985 passed by the learned District Judge, Kachchha in Regular Civil Appeal No.147/1981. The petitioners before this Court are the appellants - defendants.

The respondent no.1 herein is the owner of the suit premises, a residential house situated at Soniwada, Bhuj. The suit premiss was leased to one Pragji Uka for a monthly rent of Rs.30=00. After the death of the said Pragji Uka, the present petitioners (hereinafter referred to as 'the defendants') being the family members of the said Pragji Uka, continued to occupy the suit premises. The defendants were in arrears of rent since 1st January, 1978. The plaintiff, on 9th April, 1979, gave suit notice (Ex.27) and demanded the arrears of rent since 1st January, 1978 at the rate of Rs.30=00 per month. The plaintiff also terminated the tenancy of the defendants and called upon the defendants to handover the vacant possession of the suit premises. The suit notice was duly replied to by the defendants on 1st May, 1979. The defendants denied that the contractual rent of the suit premises was Rs.30=00. Instead, the defendants claimed that the suit premises was given on lease to the deceased Pragji Uka. The agreed rent of the suit premises was Rs.15=00 per month. The defendants also sent part of the arrears of rent i.e. for the period from January, 1979 to April, 1979 by money order, which was not accepted by the plaintiff.

The plaintiff instituted Regular Civil Suit No.502/1979 in the Court of Civil Judge (J.D.), Bhuj for recovery of possession of the suit premises; the arrears of rent and the mesne profits, inter alia, on the ground that the defendants were in arrears of rent.

The trial Court did not accept the other grounds urged by the plaintiff, however, was pleased to hold that the defendants were in arrears of rent and that they were not ready and willing to pay the rent. The Court, under the judgment and order dated 28th September, 1981, determined the standard rent to be Rs.30=00 per month and also passed decree for possession.

Feeling aggrieved, the defendants preferred Regular Civil Appeal No.147/1981 in the District Court, Kachchha. The learned appellate Judge was pleased to confirm the finding that on the date of the suit notice the defendants were in arrears of rent. The appellate

Court also found that not only pending the trial even pending the appeal the defendants had not deposited the entire amount of rent and that they were not regular in making such deposits. The appeal was dismissed by the learned District Judge, Kachchha, under the impugned judgment and order dated 19th October, 1985. Feeling aggrieved, the defendants have preferred the present Revision Application.

Mr.Thakkar has raised only one contention i.e. the suit notice was not valid and the suit based on such notice was liable to be dismissed. Mr.Thakkar has submitted that under the suit notice the plaintiff did not raise demand for a specified amount as arrears of rent. The notice, therefore, can not be said to be valid. In support of this contention, Mr.Thakkar has relied upon the judgment of this Court in the matter of SUTHAR BUDHALAL LALLUBHAI V/S. BHAGWANDAS K.GUPTA (DECD.) THROUGH HEIRS [2000(4) G.L.R. 3346]. Mr.Thakkar has particularly relied upon paragraphs 15 and 20 of the judgment. The learned Judge has, relying upon the earlier judgments in the matters of BAPULAL KALIDAS (SINCE DECEASED BY HIS LEGAL REPRESENTATIVES) AND ORS. V/S. BAI KASHIBEN WD/O CHIMANLAL CHHAGANLAL [1977 G.L.R. 77] and of RAGHUNATH GANGARAM DESHMUKH V/S. SUMANTKUMAR NAGINDAS SHAH [1999(1) G.L.R. 605], held that in absence of a specific demand for arrears of rent raised in the suit notice no suit for possession could have been instituted by the landlord on the basis of such vague notice.

I am afraid that on the facts of the present case the defendants can not avail of these judgments. In the present case, the suit notice specifically mentions that the defendants were in arrears of rent for 15 months from January, 1978 to March, 1979 and that the agreed rent of the suit premises was Rs.30=00 per month. There is also a specific demand for remittance of the amount of arrears of rent. Hence, in my view, it can not be said that there has not been a demand for arrears of rent or that such demand is vague. Even, in the matter of Bapulal Kalidas (supra), this Court has categorically held that, "In other words, the demand must be for a sum specified or it must be made in such a manner that the amount actually claimed becomes definitely ascertainable by reference to some other intrinsic evidence in the notice itself, such as the point of time from which arrears at a specified rate are due or some such or other indication." Thus, in the present case, as the demand of arrears of rent was raised specifically for 15 months at the rate of Rs.30=00 per month, the suit notice can not be said to be

vague as contended by Mr.Thakkar. No other contention has been raised before me. In my view, the suit for eviction was maintainable and has rightly been decreed.

The Revision Application is dismissed with costs.
Rule is discharged. Interim stay is vacated.

(Ms. R.M. Doshit, J.)

/sakkaf